

FORM NO – 21

(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO: O A 13 OF 2013

THIS 19TH DAY OF SEPTEMBER, 2014

CORAM: Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)

Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Shyam Kumar, LPM, No. 134900-T

Son of Shri Omprakash Gupta,

Posted at INS Netaji Subhash,

Napier Road, Hastings, Kolkata-22

..... Petitioner

-VS -

1. UNION OF INDIA, Service through: The Secretary,
Government of India, Ministry of Defence, South
Block, New Delhi – 110 105.

2. The Chief of Naval Staff, Naval Headquarters
Integrated Headquarters of Ministry of Defence (Navy)
Defence Headquarters Post Office, New Delhi-110 011.

3. The Flag Officer Commanding-in-Chief
Southern Naval Command, Naval Headquarters,
Kochi – 682 004.

4. The Commanding Officer, INS Mandovi,
Veram, Goa -403 109.

5. The Commodore Bureau of Sailors
Cheetah Camp, Mankhurd, Mumbai -400 088.

6. The Regulating School
INS Mandovi, Veram, Goa -403 109.

..... Respondents

For the appellant : Mr. Aniruddha Datta, Advocate

For the respondents: Mr. D.K.Mukherjee, Advocate

O R D E R

Per Lt. Gen K.P.D.Samanta, Member (A):

Through this Original Application filed under Section 14 of the AFT Act, the applicant has called in question the action of the respondent authorities in not announcing his result of the promotion linked training course that he attended at Naval Police (NP) & Regulating School, at INS Mandovi in March-May 2012; on account of which he was denied promotion to the rank of Regulating Petty Officer.

2. The case of the applicant in brief is that he was recruited in Indian Navy as Matric Entry Recruit (MER) on 28-1-2003. After completion of basic training he was allotted Seaman's Branch. He participated in various professional training courses and passed out with flying colour. He was nominated for LPM (Leading Patrol Man) course for change of cadre from Seaman to Provost and he completed the said training successfully with high merit. Accordingly, he was promoted to the rank of LPM. Subsequently he was nominated for special course of Ship's Installation & Security Course, which also he completed with good grade.

3. The problem for the applicant started when he was nominated for promotion linked RPO training course for the period from 5-3-2012 to 26-5-2012 for the purpose of promotion to the rank of Regulating Petty Officer (RPO). The training was scheduled to be held in NP & Regulating School at INS Mandovi, Goa. The applicant reported on 3-3-2012 at the said training establishment and commenced his training. He completed the first part of the training and also appeared in the 1st periodical examination that he cleared with high merit.

4. It is the case of the applicant that on 28.4.12 while he was sleeping in his bed at the dead of night one of the course-mates, viz. S. Yadav under the influence of Alcohol came to his bed and asked for Cigarette, which the applicant refused to provide. Being enraged by such refusal, he (S Yadav) assaulted the applicant suddenly. Thereafter some other course-mates of the applicant, who were friends of S. Yadav and were also under the influence of alcohol, came to him and beat him up brutally. The applicant's right hand was struck on the window pane while trying to defend himself; he thereby sustained multiple injuries on his right hand wrist. The applicant was taken for medical examination at MI room and ultimately he was shifted to INHS Jeevanti. After treatment for 4 days there, he was shifted to INHS Ashvini at Mumbai on 5th May, 2012. The applicant was treated there and was released on 9-5-2012 in category S1A1. Thereafter, the applicant reported at INS Mandovi on 10-5-2012 and started his training despite his injury which was still hurting. He made his preparation for the final examination because he missed some part of the training programme on account of hospitalisation. The applicant appeared in the final examination held on 22-5-2012, and according to him, he faired very well in the examination. However, he was surprised that no result was announced for the applicant even though results of other participants were announced on 26-5-2012. Subsequently, the applicant was returned back to his parent unit, i.e. INS Netaji Subhash at Kolkata on 26-5-2012, which the date when the course terminated and everyone else were also sent back to their units.

5. Being aggrieved for not getting his result of final examination, which would affect his shortly due promotion, the applicant preferred a statutory complaint under section 23 of Navy Act for redress in Sep 2012. He was subsequently granted leave and proceeded home

in December, 2012. When no response was forthcoming in respect of the statutory complaint he filed this application praying for following reliefs:-

a) To direct the respondents to award Pass Certificate to the applicant for qualifying the Regulating Petty Officer's course from NP & Regulating School at INS Mandovi in May 2012.

b) To direct the respondents to promote the applicant as Regulating Petty Officer w.e.f. Oct 2012 and award all consequential benefits of service to him from the date of his promotion.

6. By filing the Supplementary Application, the applicant has submitted some documents relevant for this case.

7. The respondents have contested the case by filing a written reply affidavit. They have stated that the RPO Course started on 5-3-2012 and first periodical test was conducted on 9/10-4-2012 and the applicant appeared in the said test. On 28-4-2012 the applicant committed some offences punishable under the Navy Act which are as under:

- a) He consumed Alcohol in Training Area.
- b) He attempted to strike one S. Yadav, LPM of the same course.
- c) He created disturbance in training living area
- d) He damaged Government property.
- e) He voluntarily caused harm to himself by attempting to commit Suicide.

8. On 30 April, 2012 he was admitted at INHS Jeevanti for treatment from where he was shifted to INHS Ashvini on 5th May 2012. He could not participate in the second periodical test as he was in Hospital. On 10th May, 2012 the applicant reported to his unit

after being released from Hospital. On 11-5-2012 the applicant was informed that his case for withdrawal from Course on disciplinary ground was taken up with HQ Southern Naval Command. On 14th May, 2012 by a fax message recommending withdrawal of the applicant from the course. The approval for withdrawal was received from HQ Southern Naval Command on disciplinary ground on 25th May, 2012. Accordingly, the applicant was withdrawn from the course on 26th May, 2012.

9. In this factual background the respondents have stated that the applicant was upset because of some domestic problem. On 28th April 2012 he managed to get liquor from outside and started drinking after dinner. Shri S. Yadav who was also doing the course along with the applicant and his seniors saw him on the wet clothes on the ground, the clothing line being cut and also one clothing stand in the storage tank. On seeing S. Yadav the applicant became violent and tried to strike S. Yadav, who cried for help and some other Sailors came to his rescue. Suddenly the applicant became more violent and broke one glass windowpane by punching with his right hand and sustained injuries. He was taken to MI room and was given first-aid. Thereafter, he was admitted in the hospital as already indicated above.

10. A preliminary investigation was conducted in which the applicant admitted his guilt. He confessed that he was disturbed because of difference between his parents and his wife. He also admitted that he committed a mistake by consuming alcohol in training premises, breaking the windowpanes etc. The PMO also tried to counsel the applicant and his wife and was thereafter sent to hospital for psychiatric evaluation due to his weak mental state. In this way the applicant could not appear in the second periodical test held on 3rd and 4th May 2012 along with others who escorted him to the hospital INHS Ashvini. He thus missed out

11 days training which amounted to 13.10% of training besides committing misconduct. After his discharge from hospital he reported back and was allowed to continue his training but in the meantime a case was taken up with the Naval Hqrs, Southern Command for withdrawing him from training course on disciplinary ground. A detailed telegram was sent on 14th May, 2012 with necessary recommendations. The reply came on 25th May, 2012 approving the proposal to withdraw him from the training on disciplinary ground. He was accordingly withdrawn from training and was sent to his parent unit with the observation that he was being sent on being withdrawn. He did not successfully complete the course and therefore he was not issued with any pass certificate. It is further stated by the respondents, since the applicant did not complete the course, his name was again sent for training for the next course to be held from 4th Mar to 25th May 2013 but he did not participate and went on leave. Therefore, the applicant is not entitled to promotion unless he completes the training successfully.

11. The applicant has filed a rejoinder in which he has brought some allegations contending that he was not given proper treatment at the time when he sustained the injury; rather he was sent to hospital after a lapse of two days when his condition deteriorated. He further alleged that the respondents have made wild allegation that he was trying to commit suicide which is not correct. Had it been so, the matter ought to have been reported to police as per rules. In the rejoinder he has also annexed a copy of order 22 Apr 13 by which his statutory complaint was rejected on the grounds stated therein.

12. When the matter was heard on earlier occasions, it was noticed on perusal of the documents that certain clarifications were necessary as there were lot of gaps which remained unexplained. Therefore, by our order 19.6.14, respondents were directed to

clarify the position on few important aspects, which should have been ordinarily covered in the affidavit in opposition in an honest and transparent manner. Some times 'half-truths' are more misleading but cannot be termed as 'untrue'. Such issues on which clarifications were sought from the respondents are as under:-

- a) Annexure-A2 reveals that the applicant was reverted to his parent unit on completion of Temporary Duty to INS Mandovi. The original documents, however, suggest that he was involved in a disciplinary case while on training at INS Mandovi. Thereafter, disciplinary action was to be taken against him but for some reason such disciplinary action was done away with and he was sent back to his parent unit which is INS Netaji Subhash. This aspect needs clarification with documentary proof attached.
- b) The main crux of the matter is that the contention made by the applicant is that he completed the RPO course at INS Mandovi which is mandatory for those in the Provost Branch of the Indian Navy and for the applicant's promotion. The respondents, however, in their A/O have submitted that he had not completed this course and he was withdrawn on disciplinary ground. Such submission is not supported by the original documents that have been submitted by the respondents. The applicant has asserted that he appeared in the examination on completion of course. It is quite clear that the applicant was present in INS Mandovi till completion of the course duration, which was up to 27.5.12, as is evident from Annexure-A2. Since the applicant was present in the training establishment till 1.6.12 as evident from the movement order (Annexure-A2), it is not understood as to why he did not appear in the examination that was scheduled between 23rd and 25th May 2012. This aspect has not been explained by the respondents clearly in their A/O. In case the respondents want to prove that he never appeared in the examination, then this aspect needs to be proved with documentary evidence. In case he indeed appeared in the examination, then result sheet needs to be produced by them.

- c) The mystery as to why no disciplinary action was taken against the applicant despite recommendation by the CO, INS Mandovi, also needs to be elucidated which has not been done by the respondents.

13. In terms of our above order, a supplementary affidavit has been filed by the respondents on the date of final hearing on 10.9.14 when Captain Sanjoy D’Cunha, CO of INS Mandovi as also the Captain Vijay Bhushan Naik, OC of the NP & Regulating School appeared in person to assist this Court.

14. In the supplementary affidavit, it is stated that on 28th Apr 2012 the applicant sustained the injury and he was immediately given first aid. He reported to the MI room on 30 Apr 12 for dressing when it was suspected by the attending physician that he might have been mentally distressed and he was then sent to the hospital, INHS Jeevanti for psychiatric evaluation. He was further transferred to INHS Ashvini at Mumbai under escort on 5th May 12 for further treatment and opinion. He was discharged from INHS Ashvini, Mumbai on 10 May 12 and rejoined training. It is further stated that the applicant could not appear in second periodical test held on 3 May 12 in two papers because of his hospitalisation.

15. After his discharge and rejoining, a preliminary investigation was held. Subsequently the matter was brought to the notice of the CO of the Station as per regulation 21 of Navy Regulations. In the meantime final examination was scheduled from 14th to 23rd May, 2014. Since approval from higher authority did not come for his withdrawal, the applicant was permitted to appear in the final examination. On 25th May 2012, approval for withdrawal of the applicant on disciplinary ground came from HQ Southern Naval Command, Kochi and hence his papers were not evaluated and he was finally withdrawn on 26th May and transferred back to parent unit (INS Netaji Subhash, Kolkata) with immediate effect.

16. We have heard Mr. Aniruddha Datta, Id. Adv. for the applicant and Mr. D.K.Mukherjee, Id. Adv. for the respondents. We have also heard Captain Sanjoy D’Cunha the CO of INS Mandavi being assisted by Captain Vijay Bhushan Naik, O I/C NP & Regulating School in the same naval Station.

17. It has been clarified by the CO of INS Mandavi that the applicant was allowed to appear at the final examination since by then approval from the Command HQ on the recommendation for his withdrawal on disciplinary ground sent vide message dt. 14.5.12 did not reach. However, his papers were evaluated, but result was not published. It is further clarified that no disciplinary action was also taken and the matter was dropped after his withdrawal from course. It is submitted that this was done by the lower subordinate authority, who is competent to do so, on the ground that since the applicant had already been withdrawn from course, he did not need to be proceeded against on disciplinary ground; as this would, as assumed by him, amount to double jeopardy. It has been further submitted before us that all answer scripts were destroyed on 20 Sep 12 in terms of Navy Order No. 84/03. It is seen from a copy of the ibid Navy order that it is provided that “completed answer books are to be retained for a period of three months from the date of promulgation of the results”. At the end of the period, they are to be destroyed by burning/shredding. The CO could not explain as to how the answer scripts of the applicant, which were not evaluated and result was also not promulgated, could be destroyed. It is only stated that all answer scripts of the entire batch were destroyed in terms of this Navy Order after three months.

18. We have also gone through the medical documents and injury report. In the medical report dt. 30.4.12, it is opined that the case of the applicant is that of 'depression'. In the injury report it is stated that it is a case of self inflicted injury.

19. We have also gone through the preliminary investigation records. It appears such investigation was done on 24th May 2012 i.e. after the final examination was over. The recommendation for withdrawal of the applicant on disciplinary ground after taking disciplinary action was recommended to the HQ Southern Naval Command by CO, INS Mandovi on 14 May 2012, which is a about 10 days before preliminary investigation was done. Five charges were made under sections 68, 75, 74 and 77(ii) of Navy Act read in conjunction with Sec 322 of IPC. A defending officer was provided and the applicant was present. The IO was one Lt. Cdr Leo Dias. Five PWs including S Yadav were named. It appears that the applicant or his defending officer did not cross examine any of the witnesses. However, deposition sheets of PWs are not available. It appears that the applicant pleaded guilty to the charge; but no finding was, however, made by the IO. It further appears that eventually no proceeding was initiated and the proceeding was closed at that stage.

20. The issue that has been urged before us by the Id. Adv. for the applicant is that the applicant was illegally withdrawn from the course and his result was not announced even though he appeared in the final examination and did well. On the contrary the contention of the respondents is that the applicant was involved in an incident on 28th Apr 12 involving acts of indiscipline in which he sustained injury while he tried to assault his senior in an inebriated condition. He had to be hospitalised for some time for which he missed some part of the training. Because of his misconduct, recommendation was sent to the higher authority for withdrawing him from course on disciplinary ground. Such recommendation

was made on 14 May 2012. Since no reply was forthcoming, and the final examination was going to start, the applicant was allowed to sit for the examination and he completed the test. However, his answer scripts were not evaluated and result was also not announced. The final approval came on 25th May 12, whereupon he was formally withdrawn and sent back to his parent unit without taking any further action on disciplinary ground.

21. It is quite evident from records that the applicant, a sailor in the Indian Navy in the Provost branch, was undergoing a training course (RPO 'Q' (57:319) from 5th Mar 2012 to 26 May 2012 at NP and Regulating School, INS Mandovi at Goa. It was a career course and result of such course would impact the candidate's promotion. The applicant in fact was not promoted, though due for the same since Oct 2012, for not qualifying in the ibid mandatory course. It appears from available records and oral submissions made by CO INA Mandovi and officer in charge of the NP and Regulating School, when they appeared in person on 10th Sep 2014, that the applicant completed the said training course and had competed all tests including the final examination except one of the periodic tests because he was admitted in hospital. He, along with few others, was, however, exempted from taking that periodic test due to such reason.

22. The applicant was, however, involved in certain acts of indiscipline during the course. The matter was reported by CO INS Mandovi to training command HQ (Southern Naval Command HQ, Kochi) on 14 May 2012. For ease of understanding we quote this letter hereunder:-

"COPY OF THE FAX OF NP & REGULATING SCHOOL DATED 14TH MAY 2012 REGARDING WITHDRAWAL FROM RPO 'Q' COURSE (57:319) SHYAM KUMAR, LPM, 134900-T

1. REFER TO THIS UNFIT FAX OF EVEN NUMBER DATED 30 APR, 03 & 10 MAY 12.
2. THE ABOVE SAILOR OF INS NETAJI SUBASH IS UNDERGOING RPO 'Q' COURSE (57:319) FROM 05 MAR 12 TO 26 MAY 12.

BRIEF HISTORY OF THE CASE

3. AT ABOUT 0030 HRS ON 29 APR 12, SHYAM KUMAR, LPM, 134900-T UNAUTHORISEDLY CONSUMED ALCOHOL IN THE INLIVING BLOCK AT EKLAVYA. THEREAFTER UNDER THE INFLUENCE OF ALCOHOL BECAME VIOLENT AND BROKE TWO WINDOW GLASS PANES OF DORMITORY NO 9 & 10 OF EKLAVYA BLOCK-M, INS MANDOVI WITH HIS HAND AND THEREBY SUSTAINED SUPERFICIAL INJURIES TO HIS RIGHT HAND WRIST. HE WAS IMMEDIATELY TAKEN TO MI ROOM, INS MANDOVI WHEREIN HIS WOUNDS WERE CLEANED AND BANDAGED. HIS DRESSING WAS CHANGED ON 30 APR 12 WHEN HE REPORTED TO MI ROOM, INS MANDOVI FOR CHANGE OF DRESSING HE WAS REFERRED TO INHS JEEVANTI UNDER ESCORTS BY PMO INS MANDOVI FOR FURTHER MANAGEMENT AND PSYCHIATRIST OPINION AND ADMITTED IN INHS JEEVANTI. ON 05 MAY 12 THE SAILOR WAS REFERRED TO INHS ASHVINI FOR FURTHER MANAGEMENT AND OPINION OF PSYCHIATRIST.

4. THE SAILOR WAS DISCHARGED FROM INHS ASHVINI IN MEDICAL CATEGORY S1A1 AND REPORTED BACK TO THIS SCHOOL ON PM 10 MAY 12.

RECOMMENDATION

5. A PROVOST SAILOR HAS TO LEAD BY EXAMPLE HIS CHARACTER AND CONDUCT HAS TO BE ABOVE BOARD. IT IS ESSENTIAL THAT THE INTEGRITY OF GUARDIANS OF LAW AND JUSTICE MUST BE IMPECCABLE AND BEYOND ANY SCOPE OF SUSPICION OR DOUBT. THE SAILOR WITH THIS ACT HAS BETRAYED THE TRUST THAT CAN BE REPOSED UPON HIM IN THE PROCESS OF EXECUTION OF DUTIES. HE CANNOT BE OVERLOOKED FOR ANY MISCONDUCT AND NEEDS TO BE VIEWED SERIOUSLY. ALSO ACTIONS TAKEN ON ERRING PROVOST PERSONNEL WILL SERVE AS A DETERRENT TO AVOID FUTURE RECURRENCES. HENCE THE QUESTION AS TO WHETHER THE PROVOST SAILOR HAS TO CONTINUE IN THE BRANCH IS TO BE SERIOUSLY DELIBERATED. HENCE IT IS STRONGLY RECOMMENDED THAT THE SAILOR BE WITHDRAWN FROM THE COURSE AND ALSO FROM THE BRANCH.

6. IN VIEW OF THE ABOVE IT IS STRONGLY RECOMMENDED THAT THE SAILOR BE WITHDRWN FROM THE ONGOING RPO 'Q' COURSE ON GROUNDS OF DISCIPLINE. IN ADDITION TO THIS, DISCIPLINARY ACTION WILL BE INITIATED AGAINST THE SAILOR FOR FOLLOWING MISDEMEANOURS:-

(A) AS AN UNDER TRAINEE, UNAUTHORISEDLY COMSUMED ALCOHOL IN THE INLIVING BLOCK AT EKLAVYA.

(B) MISBEHAVED WITH SATYAWAN YADAV, LPM, 133462-Z OF 110 RPO 'Q' COURSE.

(C) CREATED DISTURBANCE AND BECAME VIOLENT IN THE INLIVING BLOCK DURING SILENT HOURS.

(D) BROKE TWO WINDOW GLASS PANES OF DORMIRORY NO 9 & 10 OF EKLAVYA BLOCK, INS MANDOVI WITH HIS HAND THEREBY CAUSING DAMAGE TO GOVERNMENT PROPERTY AND ALSO TRIED TO HARM HIMSELF.

(E) THE SAILOR HAS MISSED OUT 11 DAYS OF PROFESSIONAL TRAINING VIEW HOSPITALISATION INCLUIDVE OF ONE SUNDAY TOTAL ABSENCE RROM COURSE IS 13.10%.

7. PARA 6 HAS THE CONCURRENCE OF THE COMMANDING OFFICER INS MANDOVI.

8. IT IS THEREFORE REQUESTED THAT THE ABOVE SAILOR BE WITHDRAWN FROM THE COURSE ON DISCIPLINARY GROUNDS. IF APPROVED, THE SAILOR WILL BE TRANSFERRED TO HIS PARENT UNIT INS NETAJI SUBHASH POST COMPLETION OF DISCIPLINARY PROCEEDINGS."

23. This letter (INS Mandovi letter No 858/24/110/RPO dated 14 May 2012 addressed to FOC-in-C HQ Southern Naval Command), which was perused by us on 10 Sep 2014 upon production, in paragraph 8 had recommended that the sailor be withdrawn from the Course on disciplinary grounds; if approved, he would be transferred to his parent unit post completion of disciplinary proceedings. The Command HQ, having quoted the ibid Para of the ibid letter, approved that the sailor be withdrawn from the said course. The above order was received by the Regulating School on 25 May 2012. The said order is as under:-

"COPY OF THE FAX OF HQ SNC/CTO (P&P) DATED 25TH MAY 2012 REGARDING WITHDRAWAL FROM RPO 'Q' COURSE (57:319) SHYAM KUMAR, LPM, 134900-T

1. REFER TO PARA 8 (6 sic) OF YOUR FAX 858/24/110/RPO DATED 14 MAY 12.
2. WITHERAW SHYAM KUMAR, LPM, 134900-T FROM RPO 'Q'; COURSE ON DISCIPLINARY GRONDS.

REGARDS, "

24. On the same day itself i.e. 25 May 2012, a subordinate officer of the O I/C NP & Regulating School made a note in an internal document (Rough Notes on Occurrences) that the **disciplinary proceedings would be dropped against the sailor (applicant)**. We find that the process to dropping the disciplinary proceedings is an abrupt decision by a junior functionary knowing fully well that the matter was recommended differently by CO INS Mandovi, under whom the said training establishment at that point of time came for discipline as admitted by the O I/C of the NP & Regulating School when he appeared in person on 10 Sep 2014. **The recommendation was clearly made to the effect that the applicant would be withdrawn on disciplinary grounds and sent to his parent unit after completion of disciplinary proceedings.** We also find that the movement order vide which the applicant was dispatched back to the unit on completion of the said course has no mention of the fact that he was being sent back on disciplinary ground.

25. Unfortunately the applicant's final examination papers were not assessed and his result was thus not declared. It is unfortunate that the answer sheets of the applicant were destroyed by the authorities 20 Sep 2012 as has been intimated to us through a supplementary affidavit filed by the respondents on 10 Sep 2014 after we had sought such clarifications. The respondents have relied on a Navy Order 84/2003 which authorized them to destroy answer sheets three months after promulgation of the result. In the instant case we find that the applicant's result was neither declared nor promulgated. The relevant part of the *ibid* Navy Order is as under:-

**"NO 84/03 DISPOSAL OF ANSWER BOOKS ON COMPLETION OF EXAMINATIONS
XXXXXXXXXXXXXX**

(a) *Written Examinations.* The completed answer books are to be retained for a period of three months **from the date of the promulgation of the results.** At the end of the period , they are to be destroyed by burning/shredding.

(b) xxxxxxxxxx"

26. In this entire process the Navy authorities appear to have failed to abide by their own orders and have created a situation where the applicant has reasons to believe that he has been wronged and hence has sought relief through this court. The matter has been mishandled by the O I/C NP and Regulating School and also inadequately supervised by CO INS Mandovi under whom the said training school came for disciplinary purpose at that point of time, as has been submitted by the O I/C when he appeared on 10th Sep 2014. The main flaws as observed by us are:-

a) It is an admitted fact that the applicant was reported to have been involved in acts of indiscipline while he was attending the course at the NP & Regulating School. The authorities should have proceeded as per rules and regulations as also the statutes for the Indian Navy. The matter should have

been properly investigated at the first place and appropriate action should have been taken thereafter. None of it appears to have been done.

b) Despite recommendation by the CO of INS Mandovi that after completion of disciplinary action he would be withdrawn from the course on disciplinary ground, the junior functionaries in NP & Regulating School merely sent him back to his parent unit at Kolkata with not even an endorsement on his movement order that he was being returned to unit on disciplinary ground and hence not assessed on course. Intimation of facts in a transparent manner to the applicant and to the CO of his parent unit would have stopped all speculative expectations. Someone in the system was trying to push things under the carpet which need to be investigated by the authorities.

c) Even at that stage the most judicious administrative action would have been to assess his final examination papers and keep the results in a sealed cover till disciplinary action was completed; but the local authorities for some reasons wanted to condone disciplinary proceedings and made it appear 'on paper' that he was merely returned back to unit after completing his course without even sharing the background with the sailor or his CO of parent unit (INS Netaji Subhash at Kolkata).

d) Assuming that the authorities condoned the applicant's acts of indiscipline, and then in that case he should have been treated like others and his results should have been declared. There was then no ground for him to be returned to unit on 'disciplinary ground'; when no such ground existed once disciplinary proceedings were condoned or dropped. Taking disciplinary

action and then returning back on disciplinary ground are consequential; if the first part is dropped or condoned then the second part does not exist. The officials taking such illogical action should be investigated upon and the erring ones should be cautioned.

e) The authorities knew that the applicant was due for his promotion in Sep – Oct 2012 and the subject training course was a mandatory requirement. Therefore, even if they defaulted by not assessing him in the course he attended, then, least of all they should have detailed him for the next immediate course so that delay in detailing does not become a cause of grievance or litigation. It is, however, true that he was detailed for next year's course i.e. Mar-May 2013, in which the applicant did not participate and an interim protection was also granted by this Tribunal in terms of order dated 20.3.13.

f) We also observe that the applicant had made a complaint on 6th Sep 2012 on the said issue. Therefore the answer papers concerning the applicant should not have been destroyed in a mechanical manner after that date along with others whose results were promulgated with a remark like 'passed', 'failed', or 'withdrawn'. Admittedly the destruction was made on 20 Sep 2012 but before such date, statutory complaint was filed and was pending. Therefore, it was not appropriate for the respondents to destroy the records. Such action appears to be highly irregular.

27. Having observed and analysed the facts and circumstances as discussed above, we are of the view that the applicant indeed attended the entire course duration of RPO course (RPO 'Q' (57:319)-110 from 5th Mar 2012 to 26 May 2012 at NP & Regulating School. He

completed the course in its entirety except for few days' absence due to hospitalisation that was condoned by the authorities. He also appeared in the final examination from 16 May to 19 May 2012 and the practical examination including project presentation from 21 May to 24 May 2012. The applicant was involved in a disciplinary case on 29 Apr 2012 for which he was investigated upon by Lt Cdr Leo Dias on 24 May 2012 (As seen from the original investigation report dated 24 May 2012 submitted by the respondents for perusal of the court). Even before that the matter was reported to HQ Sothern Naval Command on 14 May 2012 recommending that 'post disciplinary action he shall be withdrawn from the course on disciplinary ground'. Sanction for withdrawal on disciplinary ground was received from the Command HQ approving ibid recommendation. **The authorities at NP & Regulating School, however decided to close the discipline case as seen from the records maintained in the 'Rough Report Book-for use of Master at Arms'. The endorsements as quoted below are dated 25 May 2012:-**

"Investigations completed at IO's level and was due to be forwarded for O I/C's investigation, while HQ SNC directions received vide HQ SNC/CTO (P & P) Fax TR/8353 dated 25 May 12 to withdraw the said sailor on disciplinary grounds. Hence case not forwarded and closed. Sd xxxxxxxxx. 'Approved', signed by Vinay Bhushan Naik, Commander-At-Arms."

28. It is clearly revealed that the authorities, for whatever was the rationale, decided to drop the disciplinary proceedings against the applicant at the stage of investigation itself. Withdrawal from the course on disciplinary ground is consequential to existence of a disciplinary case; since the disciplinary case itself has been dropped, then 'withdrawal on disciplinary ground' cannot germinate. Hence such withdrawal is non-est in the eyes of law. Therefore we are inclined to quash the order of HQ SNC dated 25 May 2012 (HQ SNC/CTO (P

& P) Fax TR/8353 dated 25 May 12 dated 25 May 2012) being in-fructuous since on the same day the authorities dropped the disciplinary proceedings and the applicant was despatched back to his parent unit after 26th May 2012 when the course was terminated in normal course; and he left along with others, but without a 'pass certificate' for which he agitated later.

29. Now coming to his final examination results which were not promulgated. We have gone through the documents in this regard submitted to us by the respondents. We find from the results of 110 RPO 'Q' Course (57:319) forwarded by NP & Regulating School **letter No 858/24//RPO/110 dated 28 May 2012** that the overall standard achieved by the course in which the applicant was a participant was 'Distinguished'. From enclosure I of the *ibid* letter we find that the applicant is at serial 25, it was written 'pass' (partially legible since there appears to be an attempt to erase the entry); he was neither graded nor marked. It shows at remark column that he was withdrawn on disciplinary ground. At this stage we may pause and analyse the legality of not publishing the name of the applicant. The dates are important. The decision to close/drop the disciplinary proceedings was on 25 May 2012; the applicant was allowed to take his final examination (written and practical) from 16th to 24th May 2012; results for the course were finalised and despatched to higher authorities on 28 May 2012. It is easily deduced that the applicant was allowed to sit for the final examination despite a disciplinary proceeding pending and expectedly the said proceedings were dropped on 25th May 2012. Therefore the authorities had no reason, whatsoever, not to publish his result which was finalised on 28th May 2012. Non publication of his result is illogical and illegal that would now need our intervention. In this context we draw strength from the ratio of a three-judge bench Apex Court judgement, **Shri Krishnan vs The Kurukshetra University, Kurukshetra, decided on 7 Nov, 1975 {AIR 1976 SC 376 ;,**

(1976) 1 SCC 311}). In that case the appellant, a government servant, was pursuing the course of LL B as a evening student. He failed in three subjects at the Part I examination but was promoted to Part II with option to clear those subjects. He was however refused permission for Part II examination which was ultimately given on his giving an undertaking to secure his employer's permission. After the examination he demanded that his results be declared as the permission was not necessary. He was informed that since his percentage in Part I was short his candidature stood cancelled. His petition to High Court was dismissed in limine. Hence the appeal before the Hon'ble Apex Court. The Hon'ble Supreme Court considered observed as under :

“1. What appears to have been a clear case of refusal of admission to the appellant or the cancellation of his candidature at the proper time, has been completely bungled and destroyed by the inherent inconsistency and seemingly contradictory stand taken by the respondent and lack of proper vigilance on the part of the Head of the Department of Law.

4. The sheet-anchor of the case of the respondent was that the appellant had been involved in a criminal case and therefore the Head of Institution could not give the certificate in the prescribed form that the appellant bore a good moral character.

6. Mr. Sibbal learned Counsel for the appellant submitted two points. In the first place it was argued that once appellant was allowed to appear at LL.B. Part II examination held on May 19, 1973 his candidature could not be withdrawn for any reason whatsoever.....”

The decision went in favour of the appellant, who had appeared in Part II of Law Examination but despite having appeared after a bonafied hall ticket, the university authorities withheld his candidature on the ground that he was involved in a criminal case

(later discharged of all charges) and he did not take a 'no objection' certificate from his employer before appearing in the examination. The Apex Court held that –

“The University Ordinance empowers the authorities to withdraw the certificate regarding attendance before the examination if the candidate fails to reach the prescribed minimum. **But this could be done only before the examination. Once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear.**”

30. We are therefore of the view that the applicant's case that he had successfully completed the aforesaid course successfully cannot be denied on the ground of 'disciplinary proceedings and resultant withdrawal' since all charges against him were dropped at investigation stage on 25 May 2012. We are thus inclined to grant him full benefit of successful clearance of the said course including all consequential benefits.

31. On a consideration of conspectus of facts and circumstances, we allow this application in part by issuing following directions:-

- a) The order for withdrawal of the applicant on disciplinary ground (*HQ SNC/CTO (P & P) Fax TR/8353 dated 25 May 12*) cannot be sustained in the eye of law since the disciplinary proceedings were dropped; hence the said order is quashed. Consequentially, he shall be deemed to have successfully completed the 110 RPO course (RPO 'Q' (57:319) from 5th Mar 2012 to 26 May 2012 and shall be entitled to all consequential benefits.
- b) He shall be immediately considered for his promotion on the next scheduled DPC after taking into account that he is deemed to have successfully completed the ibid course on 26 May 2012. In case he is otherwise found fit for promotion, he shall be given promotion to the

grade of RPO from the date his immediate junior was promoted to the said grade with protection of seniority and notional pay benefit.

- c) The respondent Nos. 2 and 3 are directed to inquire into the lapses as observed by us from Para 26 to Para 29 above, and take suitable action against erring officials as they may think fit and proper in the interest of the organisation.
- d) This order shall be complied within 90 days from the date of communication of this order.
- e) No costs.

32. Let original records be returned to the respondents on proper receipt.

33. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of usual formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE R.N.RAY)
MEMBER (JUDICIAL)